Appraisal of Indian Reserve Lands

by Fred Singleton

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Fred Singleton is the Director of Lands in the Department of Indian and Northern Affairs for the Canadian government. His duties include the overall direction and supervision of a wide range of activities relating to the administration and management of some 578 Indian Reserves and other lands surrendered by Indian Bands (Tribes) for sale, lease or other disposition.

At present, the total area of land falling within the scope of my responsibilities is 12,000,000 acres. I suspect this acreage will increase substantially in the foreseeable future as numerous native land claims are successfully negotiated and new reserves are created. The major increases, however, will be in the more remote and unsettled areas of Canada, particularly the Northwest Territories and the Yukon. In the more settled areas of the country, reserve lands are unlikely to be increased significantly and that is precisely why these reserve lands are so vital to the economic well-being of the Indian communities. Unfortunately, many Indian Bands in settled areas have an insufficient land base to meet present needs.

Under the Canadian Constitution, legislative jurisdiction for Indians and Lands reserved for Indians rests with the Federal Government. The basic federal legislation dealing with Indian reserves is the Indian Act and a number of regulations issued under authority of this statute. In addition to the Indian Act, special acts dealing with particular reserves or portions thereof have been enacted over the years. However, these acts are restrictive in their application and were designed to deal with special situations for which the Indian Act provisions were inadequate or inappropriate. For the purpose of this paper, the focus will be on the Indian Act and its implications.

It may be of interest to you that the Constitution of Canada passed by Parliament in 1982 states that the existing aboriginal and treaty rights of the aboriginal peoples of Canada, ie., Indian, Metis and Inuit, are recognized and affirmed. In addition, Section 25 of The Charter of Rights and Freedoms incorporated in our new Constitution makes it clear that no other provision can be used in a way that will interfere with any special rights that native people have now or may acquire in the future.

The general policy relating to Indian lands had its genesis in The Royal Proclamation of 1763, which has the force and effect of a statute, having never been repealed. In fact, native people consider this to be their "Charter of Indian Rights", recognizing, as it does, the pre-

existing land rights of native inhabitants of the country. In addition to recognizing land rights of native people living under the sovereignty and protection of The British Crown, The Royal Proclamation established the process by which native land rights were to be extinguished by surrender to the Crown.

When Canada became a nation in 1867, it acquired legislative jurisdiction over "Indian and lands reserved for Indians". However, the Federal Government did not obtain ownership of Indian lands, but rather exclusive authority to enact legislation respecting such lands. Ownership, for the most part, is vested in the Provinces which entered Confederation at that time. By taking a surrender of the Indian title, ownership reverted to the Province within which the lands were located. This tended to frustrate the Federal Indian land policy and necessitated the negotiation of remedial agreements with Provincial Governments. Agreements have been concluded with all Provinces except Quebec and Prince Edward Island. There are no Indian reserves in Newfoundland but, there may well be in future as a result of settlement of claims by native people of that Province.

The major provision of these agreements enables the Federal Government to take surrenders and manage the lands in accordance with the expressed wishes of the bands concerned. The surrender process is explained later in this paper.

The Indian Act defines a reserve as land set apart for the use and benefit of a band. The legal title to a reserve vests in the Crown, however, not the band. The band interest, often has been described as a "usufruct" the right to use and benefit of the lands thus set apart. There are varying views as to the nature of the band rights in a reserve. It is sufficient for our purposes to deal with these rights in accordance with the Indian Act. At the present time, this Act applies only to Indians registered in accordance with its provisions, and not to Metis or Inuit people.

While the reserve is set apart for the use and benefit of a band, individual band members can acquire property rights which can be leased under certain conditions and passed by devise to another band member.

The Indian Act stipulates that reserve lands are not subject to "charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian". In addition, reserve lands cannot be taxed by Federal, Provincial or Municipal Governments, although non-Indian interests in such lands may be subject to taxes. Indian Band Governments, however, may obtain authority to raise moneys by taxing interests in reserve lands and licensing businesses, callings, trade and occupations.

The special exemptions from seizures are important factors in determining the value of Indian lands and certainly represent a departure from the guidelines relating to appraisal of private lands.

From the foregoing, it will be seen that the system of Indian land tenure is unique as well as complicated. The Crown owns the land - the Indians enjoy its beneficial use. Indian lands cannot be sold, leased or otherwise alienated without the consent of the majority of band members - the process which we call a surrender. In rare cases, expropriation of reserve lands can take place but band consent is obtained except where the national interest is the overriding consideration. The Indian "usufruct" is a personal right and one which cannot be transferred except with Crown consent. It is for these reasons that the Crown, which holds the title, must be a party to all transactions affecting Indian lands.

Because reserve lands in settled areas of Canada are a limited band resource, the Department rarely accepts surrenders for sale, preferring to lease the lands for the benefit of the band. In some cases, such as the need to acquire reserve lands for public purposes, outright sale is necessary but it is the practice of the Department to obtain alternative lands and thus avoid adversely affecting the band's economic well-being.

In a number of Provinces, reserve lands are located in strategically important areas. In Vancouver for example, there are several bands which have the only land available to the municipality for expansion, development, road access, etc. As urban centres continue to expand, this will become an increasingly complex problem. I should point out

Compensation Announced

Yukon Indians will receive $183 million (1982 dollars) from the federal government over the next 20 years as partial compensation for surrendering aboriginal rights to parts of the 536 130 km^2 (207,080 sq. mi.) that comprise the Yukon Territory. The proposed cash settlement, announced December 17, 1982, by the Hon. John Munro, Minister of Indian Affairs and Northern Development, is another step towards an agreement-in-principle on the Council for Yukon Indians' (CYI) comprehensive land claim which has been under negotiation since 1973. The CYI represents approximately 5,500 Yukon Indians.

Of the $183 million figure, $130 million are in exchange for aboriginal rights to land and an additional $53 million are earmarked to enable Indians to take over native federal programs such as schools and social services.

The final agreement-in-principle on the Yukon Indians' claim will designate lands on a community-by-community basis. Selection of these lands is still under way. Certain lands will involve full native ownership, while larger portions will be set aside for traditional pursuits such as hunting, fishing and trapping. Negotiations continue between the Yukon Indians and the federal government on the question of subsurface mineral rights.